opinion, any agreement to restrain him from exercising his lawful profession is void. I agree with Mr. Coomaraswamy that the distance and place in respect of the restraint are irrelevant. As regards Mr. Wrigglesworth's contention that exception 2 applies, I am of the opinion that exception 2 does not apply in this case as at the time of the execution of the agreement defendant was not then a partner of plaintiff's firm. The marginal note to exception 2 refers to agreement between partners prior to dissolution.

I next deal with the interpretation of the first paragraph of plaintiff's letter to defendant dated 7th December, 1963.

In my opinion, the English used is very clear and unambiguous. It says what it says, that plaintiff discharges the defendant from the terms and obligations of the service agreement. One of the terms of the agreement is clause 8 of the agreement and in my opinion clause 8 is included in the phrase "terms and obligations of the service agreement". The contention of Mr. Wrigglesworth that clause 8 of the agreement does not include in that phrase is not tenable. If plaintiff had so desired he would have so expressed himself in that first paragraph of his letter to the defendant. I would also refer to the last paragraph of the letter which reads as follows:—

"I do not know what you intend to do when you leave my firm but may I take this opportunity of wishing you every success in your future career."

This last paragraph of the letter would appear to strengthen the view that plaintiff had no desire to place any restraint on the defendant.

For the above reasons I am of the opinion that plaintiff must fail in this action and I dismiss it with costs.

Action dismissed.

Solicitors: *Wrigglesworth & Co.*; *Braddell Bros.*

RE CHIONH KE HU DECD.

[O.C.J. (Winslow J.) June 11, 1964]

[Singapore — Suit No. 1183 of 1962; Summons in Chambers No. 551 of 1964]

Will — Construction of — Clause imposing trust — Whether valid trust created — Whether trust created charitable.

Trusts — Trusts for persons professing or practising the Buddhist religion — Whether charitable or non-charitable — Purpose trusts.

Power of appointment — Power in the nature of trust — Bare power — Effect on each where objects are unascertainable.

The testator by his will directed his executors to convert all his property into money and after payment of his debts and funeral and testamentary expenses to divide the balance into two hundred equal shares, out of which number he made specific bequests of one hundred and seventy shares. As to the remaining thirty shares he provided in clause 5 of his will as follows: "I direct my executors to distribute the remaining thirty shares out of the said two hundred shares among such persons professing or practising the Buddhist religion and in such proportions as my executors shall in their absolute discretion think fit."

The question before the court was whether a valid disposition was created under clause 5, whether a charitable trust or a private trust or otherwise, or whether the clause failed as a disposition and there was an intestacy in respect of the thirty shares.

It was argued that the clause created a valid charitable trust; in the alternative that there was a valid non-purpose trust; in the further alternative that there was no uncertainty with reference to the objects and there was a valid private trust.

Held: (1) the words employed in clause 5 were imperative if not mandatory calling for conversion, division and distribution. These words amounted to something more than a mere discretion to distribute;

(2) clause 5 was insufficient to constitute an advancement of religion and as there was also no public benefit no valid charitable trust was created;

(3) no question of a non-charitable purpose trust arose as no purpose was defined apparent or capable of being inferred from the clause;

(4) all the objects of the power could not be ascertained and there was therefore an uncertainty with reference to the objects. Consequently the clause did not create a valid private trust and there was therefore, an intestacy in respect of the thirty shares.

Cases referred to:—

(1) *Knight* v. *Knight* (1840), 3 Beav. 148; 49 E.R. at p. 68.

(2) *Commissioners for Special Purposes of Income Tax* v. *Pemsel* [1891] A.C. 531, at p. 583.

(3) *Keren Kayemeth Le Jisroel, Ltd.* v. *Inland Revenue Commissioners* [1931] 2 K.B. 465 p. 477.

(4) *Inland Revenue Commissioners* v. *Broadway Cottages Trust* [1955] Ch. 20, at p. 31.

(5) *Gilmour* v. *Coats* [1949] A.C. 426.

(6) *In re Astor's Settlement Trusts* [1952] Ch. 534.

(7) *In re Endacott, decd.* [1960] Ch. 232.

(8) *In re H. J. Ogden* [1933] Ch. 678.

(9) *In re Moore* [1901] 1 Ch. 936.

(10) *Brown* v. *Higgs* (1843), 8 Ves. 570.

(11) *In re Gestetner Settlement* [1953] Ch. 672.

(12) *In re Coates* [1955] Ch. 495.

(13) *In re Sayer* [1957] Ch. pp. 423, 425.

SUIT.

Kirpal Singh for the plaintiffs.

T. W. Ong for the defendants.

Tan Hoay Djin (Crown Counsel) for the State Advocate-General.

Winslow J.: By his will dated 22nd December, 1941, the testator appointed the first, second and third defendants to be his executors and directed them to sell, call in and convert into money all such property belonging to him as did

not consist of money. After payment of debts, funeral and testamentary expenses, they were required to divide the proceeds of sale together with the other monies belonging to the testator into two hundred equal shares, one hundred and seventy of which he bequeathed to his sons, wives and other relatives whom he named.

There was accordingly a trust for sale and conversion impressed upon his executors and the question that arises for determination by me is whether clause 5 of his will, which relates to the remaining thirty shares out of the said two hundred shares, creates a valid and binding trust, charitable or otherwise.

Clause 5 reads as follows:—

"I direct my executors to distribute the remaining thirty shares out of the said two hundred shares among such persons professing or practising the Buddhist religion and in such proportions as my executors shall in their absolute discretion think fit."

Mr. T. W. Ong, who acts for the present trustees, was appointed to represent all persons, other than the State Advocate-General, interested in arguing in favour of a valid and binding trust. Mr. Kirpal Singh represented all persons arguing to the contrary and in favour of the proposition that there was an intestacy in respect of the said thirty shares. The State Advocate-General was represented by Mr. Tan Hoay Djin, Crown Counsel, on behalf of charity.

In the course of his submissions Mr. Ong thoroughly explored, with admirable tenacity, all avenues capable of leading to the conclusion that the clause in question creates a valid trust, with which submissions Mr. Tan, who had little more to add on charity, fully concurred, albeit with some appreciation of the difficulties confronting him. Mr. Kirpal Singh, on the other hand, argued forcibly that clause 5 does not create a valid and binding trust of any kind, whether charitable or otherwise.

All parties were agreed or, at least, proceeded to base their arguments on the assumption that the testator intended to create a trust of some kind under clause 5. I have spent some anxious hours in endeavouring to ensure that they are right because, if clause 5 confers a mere power on the executors to consider whether they should make distribution to selected persons from a class, different considerations will arise from those which would apply if the clause confers a duty-power in the nature of a trust for members to be chosen by the executors from that class.

So far as concerns the first two of the usual "three certainties" required for the creation of a valid trust as laid down in *Knight* v. *Knight*,[1] in which all introductees to the law of trusts are said to be well-grounded, there are, in my opinion, imperative if not mandatory words in the will requiring the executors to convert all his property into money, to divide it into two hundred shares and then to distribute thirty shares thereof to such of the objects set out in clause 5 and in such proportions as they think fit. In the circumstances I do not think this merely gives a discretion to distribute. If it were not for this express direction to distribute, I might have reached a different conclusion on the case as a whole as, for example, if there had merely been a discretion or a power not coupled with a duty to distribute as prescribed. The first two certainties accordingly are satisfied. It is with regard to the third certainty relating to the objects of the trust that difficulty arises. One appreciates the fact that the will was drafted, probably under harrowing conditions during the bombing of Singapore by the Japanese. I must however confine myself to the actual meaning of what the testator has in fact said and not what he might have intended to say.

It may be convenient at this stage to dispose of the question, whether clause 5 creates a valid charitable trust, because it is well-known that the vice of uncertainty as to objects will not cause such a trust to fail so long as a charitable intention is manifest.

It was argued, on the basis of the four principal divisions of charity described in Lord Macnaughten's famous classification in *Commissioners for Special Purposes of Income Tax* v. *Pemsel*,[2] that a valid charitable trust is here created by a trust for the advancement of the Buddhist religion and that the public element essential to the validity of such a trust is present in this case as the objects of the testator's bounty are a class of the public, to wit, Buddhists. It was also stressed that the administration of such a trust is one which the court can undertake, enforce and control.

Mr. Kirpal Singh on the other hand argued that clause 5 contains nothing which can be said to advance the Buddhist religion.

I must say that I agree entirely with the proposition that, if the trust can be said to be for the advancement of the Buddhist religion, it would be a valid charitable trust. My difficulty is to find an element of either purpose or advancement behind the trust in clause 5. Even assuming that there is such an element, my further difficulty is to find that it is necessarily beneficial to the public or a substantial section of the public. Gifts for religious purposes are *prima facie* charitable, provided they do not lack the element of public benefit and are for the advancement or promotion of religion in the sense of "the promotion of the spiritual teaching of the religious body concerned and the maintenance of the spirit of its doctrine and observances" (*per* Lord Hanworth M.R. approving

Rowlatt J.'s observations in *Keren Kayemeth Le Jisroel, Ltd.* v. *Inland Revenue Commissioners.*[3]).

Clause 5 contains a gift of thirty shares to individuals who profess or practise the Buddhist religion to be selected at the discretion of the executors. The executors could, perhaps, choose to give it all away to two such professing or practising Buddhists. If they choose to do so can it be said that the gift is for the advancement of the Buddhist religion?

I appreciate that this is an extreme example but the authorities make it clear that what has to be considered, in attempting to validate a trust such as this, is not what is likely to happen but what might happen (see *Inland Revenue Commissioners* v. *Broadway Cottages Trust.*[4]).

If the executors have a discretion to give all the property away to two professing or practising Buddhists or to a larger number of such persons, it is pertinent to inquire wherein lies the public nature of this trust. Further, there appears to be no purpose of any kind attached to this gift sufficient to make me hold that the purpose of the gift is to advance the Buddhist religion.

Decided authorities have held trusts to be charitable where there are, e.g., bequests to incumbents of ecclesiastical offices, simpliciter, without any indication of how they should perform their trusts, but I have yet to hear of a trust or gift for the benefit of individual members of a religious body, without any further indication of the purposes for which they should hold the same, which has been held to be charitable, either within Lord Macnaughten's classification or on the ground that it fulfils the spirit and intendment of the Statute of Elizabeth from which all charities stem. It is quite clear from a number of authorities, of which *Gilmour* v. *Coats* [5] (cloistered nuns) is one, that even a gift for religious purposes will not necessarily be held to be charitable unless there is an element of a wider public benefit. But I fail to see how a gift to selected individual members of a religious order, without more, can be said to have a religious purpose of a public nature designed to advance the tenets of that order.

I therefore hold that clause 5 cannot, by any stretch of imagination, be said to contain a trust for the advancement of religion with the requisite public element, and consequently fails as an attempt to create a valid charitable trust.

Mr. Ong next submitted that, if this clause does not create a valid charitable trust, it nevertheless creates an enforceable non-charitable trust. For this he relied on the following proposition contained at page 482, paragraph 804 of *Williams* on Executors and Administrators, 14th Edition, Volume 2, which reads:—

> "A gift may be valid even where it is expressed to be for a specific purpose and there is no person or persons named as legatee, or where the person named must, by the terms of the will, hold the gift for some specific purpose; and this is so, even if the purpose stated in the will is not charitable, provided the purpose is sufficiently defined. But where the testator expresses his intention vaguely and in effect leaves it to another to make a will for him, the gift is void for uncertainty. Thus a gift of a large income to trustees on trust to apply it to maintain the horses and hounds of the testator, together with their stables, kennels and buildings, for a period of 50 years, was held to be valid. A gift of £1,000 to a trustee, to be applied in such manner as he should in his absolute discretion think fit towards the promotion and furthering of fox-hunting was also held to be valid. Similarly, gifts have regularly been held valid, for the erection of tombs and monuments, where there is no question of uncertainty or perpetuity; likewise a gift for the erection of a Masonic temple. Such gifts are valid although there is no person named as beneficiary or *cestui que trust*, but in so far as gifts by way of trust are concerned. they are regarded as exceptional. and the class of objects to be benefited will not be extended.".

It is, however, clear that, in all the cases referred to as authorities for the propositions set out above, there were purpose trusts in the sense that the purposes of the various gifts were sufficiently defined.

The scope of these anomalous cases relating to horses, dogs, graves, monuments and fox-hunting etc. was reviewed in *In re Astor's Settlement Trusts* [6] and in *In re Endacott, decd.*[7] which, however, clearly lay down that the scope of such cases should not be extended. In these anomalous cases the courts discovered indirect means of enforcing the execution of non-charitable purposes but held out a caution that such concessions to human weakness or sentiment should be exercised with restraint. The principle underlying these exceptional cases is that, not only must there be non-charitable purposes which a court can control or enforce but the relevant purposes must be stated in phrases which embody definite concepts and the means by which trustees are to try to attain them must also be prescribed with a sufficient degree of certainty. (see Roxburgh J.'s observation in *Astor's Settlement Trusts, supra,* at page 547).

So much for the anomalous and exceptional cases or trusts of imperfect obligation, as they have sometimes been called. I do not think I need further consider these exceptional cases which, as I have already said, contained purposes which were sufficiently defined. In the case before me, however, no purpose of any kind is either defined, apparent or capable of being inferred.

As Lord Evershed M.R. said in *Endacott's* case, *supra,* at page 246 —

"No principle perhaps has greater sanction or authority behind it than the general proposition that a trust by English law, not being a charitable trust, in order to be effective, must have ascertained or ascertainable beneficiaries. These (anomalous) cases constitute an exception to that general rule.....I add also that, in my judgment, the proposition stated, in Mr. Morris and Professor Barton Leach's book 'The Rule Against Perpetuities (1956)' (p. 308) that if these trusts should fail as trusts they may survive as powers, is not one which I think can be treated as accepted in English law."

Further, in *Inland Revenue Commissioners* v. *Broadway Cottages Trust, supra* Jenkins L.J. reading the judgment of the Court of Appeal held —

"In our view, the construction placed on behalf of the Crown on the above-quoted observations of Tomlin J. in *In re H. J. Ogden* is the right one, and we see no reason for questioning the correctness of those observations of that eminent judge. On the contrary, Tomlin J.'s view, which we take to be that a trust for such members of a given class of objects as the trustees shall select is void for uncertainty, unless the whole range of objects eligible for selection is ascertained or capable of ascertainment, seems to us to be based on sound reasoning, and we accept it accordingly."

In the case of *H. J. Ogden* [8] referred to by Jenkins L.J., the head-note is as follows:—

"A testator by his will bequeathed 4 per cent. of his residuary estate to H. S. to be by him distributed amongst such political federations or bodies in the United Kingdom having as their objects or one of their objects the promotion of Liberal principles in politics as he shall in his absolute discretion select and in such shares and proportions as he shall in the like discretion think fit,'

H. S. stated that he was able to ascertain all the bodies in the United Kingdom that fell within the description of the bequest:—

Held, that no question of a charitable bequest arose; that there was a class of beneficiaries capable of ascertainment in a specified area; that the bequest was not void for uncertainty; that there was no trust for the promotion of Liberal principles; and that the bequest was valid.".

It will be observed that the terms of the bequest in *Ogden's* case, *supra*, follow, very closely, the terms of clause 5 of the present will, in the sense that there is a clear direction for distribution of specified assets amongst objects to be selected from a prescribed field by the legatee and in such shares and proportions as he shall think fit. The court held, on the available evidence, that all the members of the class of objects of the testator's bounty were capable of ascertainment. Lord Tomlin said —

"all that I have to consider is, whether there is such uncertainty in the field of selection that it is impossible for the selector to determine from which institutions he is to select. If so, the bequest is bad on the ground of uncertainty. The question is one of degree in each case, whether, having regard to the language of the will, and the circumstances of the case, there is such uncertainty as to justify the court in coming to the conclusion that the gift is bad. Now, it is to be observed that in the present case the field of selection is: 'Political federations or associations or bodies in the United Kingdom, having as their objects or one of their objects the promotion of Liberal principles.'

I have the evidence of Sir Herbert Samuel, who has referred to a number of bodies which come within the description, and who states that, in fact, he can ascertain by inquiry all the bodies that can come within that description, and I take the view that upon that evidence, and the language of the will, and having regard to the principles laid down from time to time, there is certainty here in the field of selection."

In *Ogden's* case therefore there was evidence of certainty as to the objects. What I have to decide in the current case is whether there is certainty as to the objects set out in clause 5 i.e. "persons professing or practising the Buddhist religion".

The first observation to be made with regard to these objects is the fact that there seems to be no limitation as to the locality or area from which such persons may be chosen whereas in *Ogden's* case the objects were confined to the United Kingdom. The testator, here, leaves the executors at large with the whole wide world to choose from.

Apart from the question as to who can readily be said to be a person professing or practising the Buddhist religion — which I propose to leave open for determination, if necessary, on some future occasion — the ambit of the executors' choice seems to be so widely dispersed throughout the whole world as to require a survey from China to Peru, before it can ever be said with any pretence to exactitude who these objects are at any given moment. I consider that the objections taken in *In re Moore* [9] as to the impossibility of ascertaining the last survivor of all persons in the world living at the testator's death, have equally valid application here.

This however does not necessarily conclude my views in the matter. I have referred earlier to the different consequences which flow, depending on whether the clause is held to confer a mere power to appoint from a class or whether it confers a power in the nature of a trust (or a duty-power) to distribute the thirty shares in question to members of the specified class, the only discretion conferred on the trustees being to decide who in that class should be the recipients of the testator's bounty and in what proportions. If there can be said to be a mere power to appoint and not a duty to distribute the shares within that class, then uncertainty as to the enumeration of all members of the class will not vitiate the gift.

Lord Eldon distinguished between powers and duty-powers in *Brown* v. *Higgs* [10] in the following terms:—

"It is perfectly clear that where there is a mere power, and that power is not executed, the court cannot

execute it. It is equally clear that wherever a trust is created, and the execution of the trust fails by the death of the trustee or by accident, this court will execute the trust. But there are not only a mere trust and a mere power, but there is also known to this court a power which the party to whom it is given is entrusted with and required to execute; and with regard to that species of power the court considers it as partaking so much of the nature and qualities of a trust, that if the person who has the duty imposed upon him does not discharge it the court will, to a certain extent, discharge the duty in his room and place....

If the power be one which it is the duty of the party to execute — made his duty by the requisition of the will — put upon him as such by the testator, who has given him an interest extensive enough to enable him to discharge it, he is a trustee for the exercise of the power, and not as having a discretion whether he will exercise it or not; and the court adopts the principle as to trusts, and will not permit his negligence, accident or other circumstances to disappoint the interests of those for whose benefit he is called upon to execute it."

A long line of cases including, in chronological order, *In re Gestetner Settlement*,[11] *In re Coates* [12] and *In re Sayer* [13] make it clear that, in the case of a mere power, it is not necessary to ascertain every member of the class of beneficiaries but only whether a particular *praepositus* can be regarded as the object of the power i.e. whether he qualifies to be a member of the class. A power may therefore be good although in favour of an indefinite class.

On the other hand, where it is impossible to make a complete list of beneficiaries, a duty-power or a power in the nature of a trust to distribute to members of such a class is void for uncertainty. In *Ogden's* case, *supra*, however, all members of the class were identifiable and the trust survived.

After spending many an anxious hour in reviewing the authorities over and over again in order, if possible, to avoid an intestacy as to the thirty shares in question, I have inevitably and reluctantly had to come back again and again to the view, which I originally held at the conclusion of the hearing, that clause 5 does not create a valid or binding trust, whether charitable or otherwise. Had there been a mere power to appoint amongst members of the class, there would probably be no failure on proof that selected members were in fact professing or practising Buddhists. It is unfortunate that the imposition of a duty to distribute should have this effect of defeating the gift when, had there been no such duty, as in *In re Gestetner Settlement, supra*, the gift could probably have been saved.

Further. the trust cannot be saved by treating it as a power because, as Lord Evershed M.R. said in *Endacott's* case above, "the proposition that if these trusts should fail as trusts they may survive as powers, is not one which I think can be treated as accepted in English law".

In a further attempt to avoid an intestacy, I have also considered whether it would be permissible to construe clause 5 in such a way as to limit the ambit of the executors' choice to persons of the class in question either in Singapore or in the then Straits Settlements so as to render the objects more easily capable of ascertainment, if necessary after taking further evidence. I fear that I am precluded by the authorities from making any such assumption as to limitation of the objects to any particular locality, however attractive the idea may be. I cannot, in short, write the will for the testator.

I am grateful to all counsel in the case for their assistance.

Costs of all parties and the State Advocate-General out of the estate.

Order accordingly.

Solicitors: *Mallal & Namazie*; *Laycock & Ong*.

MUKA BIN MUSA v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Wylie C.J. (Borneo)) November 6, 1963]

[Jesselton — Federal Court Criminal Appeal No. 8 of 1963]

Evidence — Confession — Double interpretation — Possibility of doubt.

Penal Code, s. 396 — Gang robbery with murder by pirates — Retracted confession — Double interpretation.

In this case the appellant was convicted of gang robbery with murder contrary to section 396 of the Penal Code. The only evidence connecting the appellant with the offences was a confession he made before a magistrate. This confession was in a sense retracted at the trial in that the appellant set up a defence of duress. The confession was recorded by a process of double interpretation, the appellant speaking in his own language which was interpreted into Malay and from Malay into English. On appeal it was urged that there was a possibility of misinterpretation which was so substantial as to introduce an element of doubt.

Held: in the absence at the trial of any evidence to cast doubt upon the correctness of the appellant's statement it could not be said that there was any possibility of such substantial misinterpretation as to destroy the force of the confession.

FEDERAL COURT.

Shelly Yap for the appellant.

W. A. Raby (Deputy Public Prosecutor) for the respondent.

Thomson L.P. (delivering oral judgment): The appellant was convicted in the High Court at Tawau for the offence of gang robbery with murder contrary to section 396 of the Penal Code which states:—

"If any one of five or more persons, who are conjointly committing gang-robbery, commits murder in so committing gang-robbery, every one of those persons shall be liable to death with or without a fine."

The appellant is now appealing against his conviction.

The facts of the case are straightforward. On the 9th April, 1962, five persons who, without causing unnecessary offence to anybody's feelings, can be correctly described as pirates came by boat to a small village on Pulau Omadal. They were all armed. One of the party remained in the boat while the others entered the village, shot dead the Chinese shopkeeper and a Bajau man who worked in the shop, removed some goods and left in their boat.

On the night of the 11th February, 1963, a British warship came upon a boat on the high seas. One of the persons in this boat was the appellant who was taken into custody.

Subsequently he made a statement before a magistrate the admissibility of which was not contested at the trial. That confession was the only evidence which connected the appellant with the offences described. It was in a sense retracted at the trial in that the appellant set up a defence of duress, and in the circumstances it attracted very careful scrutiny. We ourselves have scrutinised it with care, particularly in view of the fact that it was recorded by a process of double interpretation, the appellant speaking in his own language which was interpreted into Malay and from Malay into English.

It has been urged upon us, although there is no evidence to that effect, that there was a possibility of misinterpretation and that this possibility is so substantial as to introduce an element of doubt.

In his statement the appellant said:—

"I followed with Abdul Hallim, Lujani and Sahibin and Sawara to pirate Kg. Omadal, Semporna District, in March 1962. We came to the kampong at about 3 p.m. We ate first then we raided the kampong. Lujani and Abdul Hallim went into the shop. Abdul Hallim told us he had shot a Chinese dead. I heard the sound of the shot as I was waiting in the boat, guarding the boat. Sawara shot the Bajau. Sahibin and Sawara were waiting outside the shop while the other two were raiding the shop. Altogether I heard two shots fired. One killed the Chinese, one the Bajau. We brought 5 weapons altogether. One Garrand, 'Musil' described as like a rifle American make. .22 rifle carbine. There were over 100 rounds of ammunition. We brought the weapon to aid us in our raid of the village. After the shots my friends brought out clothing from the shop and put it in the boat. We loaded up the boat and sailed back to the Philippines. ...."

In the absence at the trial of any evidence to cast doubt upon the correctness of the appellant's statement as quoted, we regret that we are unable to say that we can see any possibility of such substantial misinterpretation as to destroy the force of the confession.

In the circumstances the appeal is dismissed.

Appeal dismissed.

BISHAN SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim J.) February 28, 1964]

[Raub — Criminal Appeal No. 3 of 1964]

Road Traffic — Driving licence — Production of, for police examination — Whether driver arrested or detained — Road Traffic Ordinance, 1958, ss. 36(1), 48(1) and 56.

Road Traffic — Traffic signs — Police road barrier — Whether motorist under obligation to stop — Traffic Signs (Size, Colour and Type) Rules, 1959, r. 3 and Schedule.

Failure to comply with the provisions of section 56* of the Road Traffic Ordinance is fatal to a prosecution under section 36(1) of the Ordinance.

* 56. Where a person is prosecuted for an offence under section 35 or section 36 or any of the provisions of this Part of this Ordinance relating to the maximum speed at which motor vehicles may be driven, he shall not be convicted unless within fourteen days of the commission of the offence — (a) a summons for the offence was served on him; or (b) a notice in writing of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence: